

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3621 OF 1991

Smt. Laxmibai Rangayya Nagale
since deceased by her heir
and legal representative
Hemlata Rangayya Nagale

..Petitioner

versus

Gangadhar Waman Inamdar & Ors

..Respondents

Mr. V. S. Gokhale for the Petitioner.

Mr. D. K. Ghaisas for the Respondent No. 1.

CORAM : D. G. DESHPANDE, J.

DATE : 6TH NOVEMBER, 2006

ORAL ORDER :

1. Heard Advocate for the Petitioner and Respondent No.1.

2. Petitioner is the tenant. A suit came to be filed against her for eviction before the Small Causes Court, Pune vide Suit No. 37 of 1986 on the ground of defaults, subletting, nuisance and bonafide requirement and for arrears of rent etc.

The agreed rent is Rs.55/- per month. That suit was decreed on the ground of default and the defendant was permitted to vacate the premises and pay the arrears etc. by judgment and decree dated 23.4.1987. The tenant petitioner filed a appeal before the District Judge, Pune. Her appeal was dismissed by the VII Additional District Judge, by judgment dated 26.6.1989, and, hence this petition.

3. There are concurrent findings of facts on the ground of default and admittedly unless the petitioner succeeds in showing that findings of both the courts below are perverse, the petitioner cannot succeed in this petition.

4. So far as the case of the landlord regarding arrears is concerned, according to the plaintiff, the defendant is in arrears of rent and education cess from 1.7.1961. He gave notice in that regard vide Exhibit 18 dated 9.10.1985 calling upon the tenant - petitioner to pay the arrears of rent, education cess from 1.7.1961 amounting to Rs.17,000/- and odd.

5. From the judgment of the trial court, it is

clear that the trial court placed the entire burden upon the defendant and held that since the defendant tenant has failed to prove that she paid the taxes fully till the date of notice, she was required to be held as a defaulter and ultimately came to the conclusion that the case was governed by Section 12 (3)A of the Bombay Rent Act and the defendant petitioner is liable to be evicted. The appellate court followed the same reasoning given by the trial court. The appellate court also held that the fact regarding payment of taxes directly to the Municipal Corporation was within the knowledge of the petitioner - tenant and therefore the burden heavily lies upon her to prove that she had paid the taxes.

6. In my opinion, approach of both the courts below is perverse for the following reasons.

. Firstly it has to be noted that the notice demanding arrears is 24 years after the arrears become due. According to the landlord, petitioner - the tenant did not pay rent from 1.7.1961 but landlord did not do anything for 24 years and for the first time he sent notice on 9.10.1985. There is no explanation from the landlord at all why he

waited for 24 years demanding the arrears and why he permitted and allowed the petitioner - tenant to occupy the premises without payment of rent for 24 years. Suddenly one fine morning after 24 years the landlord wakes up about his right to recover the rent and then give notice. Therefore, in this background of the matter, the conduct of the landlord becomes highly suspicious at least in demanding arrears of 24 years. But the courts below did not pay any attention to this aspect of the matter. Secondly, when the tenant contended that she was paying the taxes to the Municipality directly from the beginning the landlord has no explanation why he allowed the tenant to pay the rent directly to the Corporation in lieu of paying rent directly to the landlord instead. The landlord has nowhere stated that during those 24 years he has kept any account with him about Municipal taxes due every year and the payment of rent by the tenant to the Corporation directly. It is a matter of fact that the taxes of the Corporation do not remain same for 24 years. There is assessment and re-assessment after every four years and in that view of the matter it was incumbent upon the landlord to come with clear case as to since when

this arrangement between the landlord and the tenant commences; how and for what reasons the landlord consented for the tenant depositing the rent in the Corporation towards taxes, what were the annual taxes during all those 24 years and what was the rent paid by the tenant and how he was in arrears and for what period.

7. It appears from the notice and the plaint that landlord has completely and totally suppressed this important aspect of the matter from the court. He has not at all uttered a word either in the notice or in the plaint regarding the aforesaid four aspects of the matter about the agreement of the tenant regarding payment of rent directly to the Municipal Corporation, the mode and method of payment and account of taxes and the rent paid directly.

8. What the landlord has simply done in this case is that he has accepted the case of the tenant, that the tenant was paying the taxes directly to the Corporation and tried to shift the entire burden of payment upon the tenant. Both the courts simply accepted the case of the landlord that the tenant

has failed to pay the taxes to the Corporation during all this period.

9. The judgments of both the courts below are therefore perverse. Both the courts did not take into consideration this aspect of suppression of material facts from the court. The appellate court noted in paragraph 11 of its judgment that the landlord had failed to pay arrears from 1.7.1961, no counterfoils have been produced and proved by the landlord and one Pandurang was examined on behalf of the landlord has no knowledge about the arrears.

10. When the landlord claims that the tenant is in arrears for a long period of 24 years, then burden lies upon the plaintiff landlord to prove such arrears. The courts should not have permitted the landlord to bang only upon his demand of rent from 1961 and the courts could not have come to the conclusion that the defendant was actually in arrears for 24 years.

11. Period of 24 years is a long period and when the landlord claimed that the tenant is in arrears from 1.7.1961 in his notice dated 9.10.1985 Exhibit

18, in such a case heavy burden was upon the plaintiff landlord to prove arrears and come out with a clear case regarding the aforesaid aspects of direct payment of taxes by the tenant to the Municipal Corporation.

12. Ordinarily it is true that burden of payment is on the person who asserts, but in this case particularly approach of the courts below that no burden lies upon the plaintiff to prove the arrears, is totally perverse. Since approach itself is very perverse the ultimate judgment of both the courts below in favour of the landlord is perverse.

13. My attention was also drawn by the Counsel for the tenant to the record and proceedings of the case wherein the tenant has filed all the necessary documents. It was incumbent upon the landlord to amend his plaint to include all the particulars as referred by me repeatedly above. The landlord has done nothing, he did not even produce the tax notice served upon him or which might have been served upon him during all those 24 years by the Corporation and he did not come up with accounts regarding the taxes demanded and the rent paid. If he had done this

then only his case regarding the defendant being in arrears for a long period of 24 years could have been properly scrutinised by the courts below.

14. Admittedly, the landlord has failed to discharge his burden of proving the arrears. The right of the tenant to pay the rent directly to the Corporation towards taxes for a long period of 24 years and therefore when the defendant has proved payment of taxes and was claiming adjustment and then the burden again shifted upon the plaintiff.

15. As noted by me according to the appellate court payment of taxes was a matter within the knowledge of the tenant and therefore the tenant should have proved this aspect. It is also a wrong assumption. Taxes are paid to the Corporation and if the tenant pays taxes i.e. rent towards tax for 24 years, it is also a matter within the knowledge of the plaintiff because plaintiff has consented to it, the defendant could not have paid rent towards taxes for 24 long years. The plaintiff also therefore could have summoned officers of the corporation or witnesses from the Corporation to prove the total payment of tax during all those 24

years and the amounts paid by the tenant towards tax or rent. The plaintiff has done nothing to discharge his burden.

16. The entire approach of both the courts is therefore perverse and these judgments are liable to be set aside. Petition is allowed. Rule is made absolute. Both the judgments of the courts below are set aside and the suit of the landlord is dismissed. In the circumstances, no order as to costs.

(D.G. DESHPANDE, J.)